
(1979) 01 OHC CK 0012
In the Orissa High Court

Bhima Nayak and Others

APPELLANT

Vs

Panjashaw Durgah and Others

RESPONDENT

Date of Decision : 29-01-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145
Evidence Act, 1872 — Section 114

Citation : (1979) 48 CLT 70 : (1979) CriLJ 1200

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Judgement

S. Acharya, J.—This criminal revision has been filed to quash the order dated 8-11-1973 in M. C. No. 10/78 passed by the Executive Magistrate, Aska, converting a proceeding u/s 144, Cr. P.C. to one u/s 145, Cr. P.C. and issuing an order attaching the crops on the lands in question and keeping the same in the custody of the local Revenue Inspector and prohibiting both the parties to go upon the said lands. The petitioners in this criminal revision are members of the second party and the opposite parties are members of the first party in the said proceeding. The impugned order was passed ex parte on hearing the Advocate for the first party and on perusing the report of the Officer-in-Charge, Aska P. S., which had been called for by the Magistrate on the filing of a petition u/s 144 Cr. P.C. by the opposite parties herein.

2. It is submitted by the learned Counsel for the petitioners that the proceeding u/s 145, Cr. P.C. should be quashed as by a series of judgments and decisions of competent Courts the title and possession in respect of the lands in question have been declared in favour of the petitioners (second party members in the Court below) and the Executive Magistrate has to respect and uphold those decisions and cannot again subject the petitioners to a proceeding u/s 145, Cr. P.C.

Mr. Basu, the learned Counsel for the opposite parties, contends that as the Magistrate is satisfied that there is an apprehension of breach of peace due to

dispute between the parties regarding possession of the land in question, the Magistrate has rightly drawn up the proceeding u/s 145, Cr. P.C. in order to maintain peace in the locality, and previous decisions would not be of any avail to decide the question of possession at the relevant time as required u/s 145 of the Code. He further contends that there is nothing on record on which it can be said that the petitioners were in possession of the lands at the relevant time.

3. Admittedly, Hazarat Panjashaw Durgah was the intermediary in respect of the lands in question, and the said intermediary estate in which the lands in question situate vested on the State of Orissa by notification dated 15-7-55 under the provisions of the Orissa Estates Abolition Act (hereinafter referred to as the "Act"). After the vesting of the estate, the opposite parties herein and some others filed applications on 18-1-58 under Sections 6 and 7 of the Act claiming settlement of the said property with them. Those applications were registered as O. E. A. Case Nos. 254/58 to 269/58. The petitioners herein filed objection before the Estates Abolition Collector against the said petitions and the same applications were rejected on the ground that the applicants were not the intermediaries and the said applications were not maintainable. It was also held therein that:

...from all the circumstances I hold that the applicants (present opp. parties) were not in khas possession of the lands prior to the date of vesting or on the date of vesting." An appeal (O. E. A. Appeal No. 24/64) preferred by the unsuccessful party (including the opposite parties herein) against the aforesaid decision was ultimately dismissed on 19-4-73 by the Additional District Magistrate, Ganjam, who held:

So the learned Tahsildar's finding to the effect that for these 400 or 420 bharans of land the appellants were not in possession is to be sustained and so the appellants cannot get these lands on fair rent.

Thereafter the unsuccessful party (including the opposite parties herein) filed O. J. C. No. 447/73 in this Court, and this Court in para 5 of its judgment in that case held:

The petitioners (the opposite parties in this revision) have all along been claiming themselves as intermediaries in respect of different parcels of lands and did not at any time admit that the properties were of the Dargha. They never claimed that the applications made by them should be treated to be by the trustees representing the Dargha. Those were not valid applications by the intermediaries under Sections 6 and 7 of the Act." In para 6 thereof it was held:

Admittedly, there has been no application on behalf of the ex-intermediary within the statutory period which expired on 5-9-58 and there is no material on record that the petitioners are trustees of the intermediary institution. We, therefore, hold that the properties have already vested in the State Government." In para 10 thereof it was held:

The opposite parties 3 to 23 (include the present petitioners in this revision) have claimed occupancy rayati rights in respect of 400 bharans. There is no question of their filing a petition u/s 8-A of the Act, they should be deemed to be the tenants under the State Government for these 400 bharans and shall hold the lands in the same right as they were entitled immediately before the date of vesting.

Against the said decision the unsuccessful opposite parties filed SLP No. 1121/75 in the Supreme Court, and by order dated 7-1-76 their Lordships, after hearing both the parties, vacated the ad interim stay order by observing:

So far as the 400 bharanams of land are concerned, where possession was found to be with the tenants, stay is vacated. With regard to balance, the stay will operate. The SLP will be taken up three weeks later.

Thereafter the SLP was withdrawn by the opposite parties.

After the dismissal of the O. E. A. Case No. 254/58 as stated above, the proceedings u/s 145, Cr. P.C. initiated by the opposite parties against the petitioners were dropped on 15-7-65, but the order of attachment of the lands in question was continued and the property was not released in favour of any of the parties in the said proceedings. However, the Magistrate on 10-6-66 directed that the attached lands be released in favour of the opposite parties. Criminal Revision No. 493/66 filed by the petitioners against the said order dated 10-6-66 was dismissed by the then Chief Justice Khalil Ahmed, but his Lordship ordered that the usufructs of the lands in question which were in deposit in the said proceeding would be disposed of in accordance with the decision of the High Court in O. J. C. No. 242/66 which was then pending in this Court. That writ petition filed by the petitioners was allowed and the order of the Additional District Magistrate, Ganjam, in Estates Abolition Appeal No. 24/64 and Misc. Petn. No. 6/66 was quashed. After that the petitioners approached the Executive Magistrate to deliver possession of the lands in question to them, but the Magistrate rejected the said prayer on the ground that he had become functus officio by then. Against the said order of the Magistrate, Criminal Revision No. 437/71 and Nos. 485 and 497 of 1971 were filed by the petitioners and the said Criminal Revisions were allowed, and this Court directed the opposite parties herein to deliver possession of the lands in question to the petitioners. The Magistrate also on 22-4-1976 directed the opposite parties to deliver possession of the said lands to the petitioners. Criminal Revision Nos. 165 to 178 of 1976 filed by this Court by the opposite parties in this revision were dismissed and the order of the Magistrate dated 22-4-76 directing delivery of possession of the lands in favour of the petitioners was confirmed. Special Leave Petitions Nos. 175 to 188 of 1976 filed by the opposite parties in the Supreme Court were also dismissed, and after that the Magistrate again on 15-4-77 directed delivery of possession of the lands in question in favour of the petitioners. Criminal Revisions Nos. 44 to 66 of 1977 were filed by the opposite parties against the said order dated 15-4-77, but the same were dismissed by the Sessions Judge,

Ganjam. There is presumption of compliance of the said judicial orders and there is nothing to indicate that the said orders were not complied with.

Apart from the above observations, decisions, directions and orders in favour of the petitioners, it is also seen that the petitions for injunction against the petitioners and appointment of a receiver in respect of the same lands filed by the opposite parties in Title Suit No. 14/77 (filed by the opposite parties) have been dismissed on the finding that:

Neither the Dargha nor the plaintiffs-muzawars representing it have any title or interest in respect of the suit lands." It is also held therein that there was no justification for restraining the defendants from going upon the lands in question as they were found to be occupancy rayats in respect of the lands in question. Miscellaneous Appeal Nos. 188/77 and 189/77, filed in this Court by the opposite parties against the said order of the Subordinate Judge, have been dismissed and it has been held therein:

It is asserted on affidavit by the respondents that in pursuance to the said order i. e. order in Criminal Revisions, Special Leave Petitions etc., referred to above), the respondents have taken delivery of possession and are in possession. In view of these facts which are borne out on record and correctness whereof is not disputed, it must be held that the respondents are in actual possession of the disputed land.

4. The correctness of the facts stated above has not been assailed by Mr. Basu, the learned Counsel for the opposite parties. He, however, states that in the fresh Survey and Settlement operations the Assistant Settlement Officer on 7-10-1963 held that the claim of the petitioners that they were the occupancy rayats of the lands was not maintainable; and that the Dargha, of which the opposite parties were the muzawars, was in possession of the disputed lands. The order fixing the rent to be paid by the Dargha in respect of the lands has been finalised on contest in 1975. Mr. Basu submits that as the said findings and order have become final and the petitioners have not filed any suit for declaration of their occupancy right after the said settlement of the lands and fixation of rent, the petitioners cannot any further agitate their claim of occupancy right in respect of the lands in question. He further says that in O. E. A. Appeal No. 24/64 the Additional District Magistrate at one stage had directed that the lands in question, which had been kept under attachment in a 145 proceeding, be released in favour of the opposite parties on 10-6-1966, and in accordance with that direction for delivery of possession of the lands in question was effected in favour of the opposite parties on 10-6-1966. Mr. Basu contends that as there is no positive evidence on record that the said lands were taken back from the opposite parties and possession of the same was actually delivered in favour of the petitioners at any later date, and as there is positive material before the court regarding apprehension of breach of peace, the Magistrate was legally justified and competent to initiate the present proceeding u/s 145 Cr. P.C. and this Court cannot quash this proceeding as prayed for by the petitioners.

5. Admittedly, in the 1949 Settlement operations the petitioners and/or their ancestors were at first recorded as Bhag Chasis in respect of the lands in question. From the facts mentioned in paragraph three it is quite evident that the order for delivery of possession on 10-6-1966 was made on the decision dated 21-1-1966 in O. E. A. Appeal No. 24/64, which decision was quashed by this Court in O. J. C. No. 242/66 on 28-1-1970. Thereafter, this Court in Criminal Revision No. 437/71 and Criminal Revisions Nos. 485 to 497 of 1971 directed delivery of possession of the said lands in favour of the petitioners, and the Magistrate, in consonance with the said order, directed delivery of possession of the said lands on 22-4-1976 in favour of the petitioners. Criminal Revisions Nos. 165 to 178 of 1976 filed by the opposite parties in this Court against the aforesaid order dated 22-4-1976 were dismissed, and the Magistrate's said order was confirmed. SLP No. (Criminal) 175-188 of 1976 filed by the opposite parties in the Supreme Court against the decision in the above-mentioned Criminal Revisions in this Court were dismissed. Thereafter, the Magistrate on 15-4-1977 directed, delivery of possession of the lands in question to the present petitioners. Criminal Revisions Nos. 44 to 66 of 1977 (G) filed by the opposite parties against the aforesaid order on 15-4-1977 were again dismissed by the Sessions Judge, Ganjam on 17-8-1977. Moreover, further attempts in Title Suit No. 14/77 by the opposite parties for injunction against the present petitioners to go upon the lands in question and for appointment of a receiver in respect of those lands failed on the ground that the present petitioners (defendants in that suit) were found to be the occupancy rayats of the suit lands. In the appeals (Misc. Appeals Nos. 188/77 and 189/77) against the said decision of the Subordinate Judge, this Court has found that it must be held that the respondents are in actual possession of the disputed lands.

6. In view of the above decisions, especially the decision of this Court in Misc. Appeals Nos. 188 and 189 of 1977, in favour of the petitioners, the decisions of the Settlement Officers and the order for delivery of possession in favour of the opposite parties passed on 10-6-1966, referred to by Mr. Basu, do not assume weight or importance. All litigations between the parties since 1971 in the High Court and in Civil and Criminal Courts and in the O.E.A. Cases Nos. 254 to 269 of 1958 and O. E. A. Appeal No. 24/64 ended in favour of the petitioners. In the above decisions the rights of the petitioners to remain in possession of the lands in question have been upheld, and in many of the said decisions repeated orders directing delivery of possession of the said lands to the petitioners have been passed. This Court in Miscellaneous Appeals Nos. 188 and 189 of 1977 has decided that it must be held that the petitioners are in actual possession of the disputed lands. That being so, the court below exercising jurisdiction u/s 145 Cr. P.C. should respect the said decision and prevent defiance of the same. Its process should work to protect the rights of the petitioners as declared by the above courts and not to render these decisions ineffective and/or valueless by fresh investigation regarding possession of the said properties in a proceeding u/s 145 Cr. P.C. No doubt, till now there is no direct proof on record of the fact as

to which of the two parties was in actual possession of the lands in question at the relevant time when the present proceeding u/s 145 Cr. P.C. was drawn up. But from the decisions and orders in the above-mentioned litigations between the parties and repeated directions by competent, courts for delivery of possession of the lands in question in favour of the petitioners and in view of the finding in Miscellaneous Appeals Nos. 188 and 189 of 1977, the Magistrate should, in the facts and circumstances of this case, proceed on the basis that the petitioners were in possession of the said lands at the relevant time, as presumption to that effect can be legitimately drawn u/s 114, Evidence Act and there is nothing to rebut that presumption. If after such stand and attitude of the court there be any apprehension of breach of peace relating to the possession of the said lands, the Magistrate should take recourse to proceedings u/s 107 or 144 Cr. P.C. instead of a proceeding u/s 145 Cr. P.C. It is the duty of a Magistrate to respect the decisions and directions of a competent Civil Court regarding possession or delivery of possession in favour of a particular party and to act in agreement with such decisions and directions. If the proceeding u/s 145 Cr. P.C. between the parties in respect of the same lands is allowed to continue till its conclusion, that would frustrate the sanctity, weight and effect of the said decisions, and would encourage defiance of the said decisions, directions and orders which would tend" to paralyse administration of justice. Once a dispute as to possession has been resolved in the proper manner by a Civil Court of competent jurisdiction, there would no longer exist a dispute within the meaning of Section 145(1) Cr. P.C. and so a Magistrate should not again proceed to decide the question of possession in a proceeding u/s 145 Cr. P.C..

7. On the above considerations, the proceeding u/s 145 Cr. P.C. initiated by the Magistrate is dropped. For the purpose of preventing breach of peace, if any, the Magistrate may, if necessary, initiate other appropriate proceedings in accordance with law.

The Revision is allowed.

The L. C. R. be sent back immediately.